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APR 28 2005

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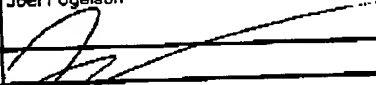
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| <b>TRANSMITTAL FORM</b><br>(to be used for all correspondence after initial filing) | Application Number     | 09/712,887        |
|   | Filing Date            | November 15, 2000 |
|   | First Named Inventor   | B. Weber, et al.  |
|   | Art Unit               | 2155              |
|   | Examiner Name          | D. Lazaro         |
|   | Attorney Docket Number | PU000125          |
| Total Number of Pages in This Submission  |                        | 17                |

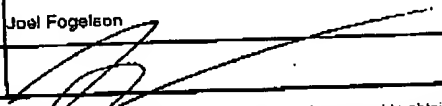
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## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

|                         |   |
|-------------------------|---|
| Firm or Individual name | Joel Fogelson   |
| Signature               |  |
| Date                    | April 28, 2005  |

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Serial No.: 09/712,887

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

**Before the Board of Patent Appeals and Interferences**

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CENTRAL FAX CENTER**

**APR 28 2005**

Appellants : Barry Jay Weber et al.  
Serial No. : 09/712,887  
Filed : November 15, 2000  
For : Internet Multimedia Advertisement Insertion Architecture  
Examiner : Lazaro, David R.  
Art Unit : 2155

**APPEAL BRIEF**

May It Please The Honorable Board:

This is Appellants' Brief on Appeal from the final rejection of Claims 2-16. Please charge the \$500.00 fee for filing this Brief to Deposit Account No. 07-0832. Appellants waive an Oral Hearing for this appeal.

Appellants also request a one-month extension under 37 C.F.R. 1.136(a) to submit this brief. Please charge the \$120.00 fee for this extension to the above-indicated Deposit Account.

Please charge any additional fee or credit overpayment to the above-indicated Deposit Account. Enclosed is a single copy of the Brief.

05/02/2005 JBALINAN 00000031 070832 09712887

02 FC:1251 120.00 DA

**I. REAL PARTY IN INTEREST**

The real party in interest of Application Serial No. 10/033,317 is the

Assignee of record:

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01 FC:1402 500.00 DA

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## **II. RELATED APPEALS AND INTERFERENCES**

There are currently, and have been, no related Appeals or Interferences regarding Application Serial No. 09/712,887 known to the undersigned attorney.

## **III. STATUS OF THE CLAIMS**

Claims 2-16 are rejected.

The rejection to Claims 2-16 is appealed.

## **IV. STATUS OF AMENDMENTS**

All amendments were entered and are reflected in the claims included in Appendix I.

## **V. SUMMARY OF CLAIMED SUBJECT MATTER**

Independent claim 13 recites a system that combines both broadcast program content and advertisements into a composite datastream that is delivered to a user, where advertisements are targeted to specific users. A condition access processor (see specification, page 10, lines 3-13)

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determines whether the system can access broadcast program content that is later transmitted to multiple users by a multiplexer (specification, page 9, lines 20-34). A scheduler (specification, page 8, lines 22-37) works in tandem with the multiplexer to determine when the multiplexer should combine advertisements with the accessed broadcast program content to form composite datastreams. Ideally, the system is capable of providing multiple users with individualized composite datastreams (specification, page 6, lines 1-8).

#### **VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

The Examiner rejected claims 2, 3, 7, 8 and 12-16 as being anticipated under 35 U.S.C. §103(a) over Monteiro et al. (US 5,778,187, hereafter referred to as 'Monteiro') in view of Broadhurst et al. (US 6,205,480, hereafter referred to as 'Broadhurst').

The Examiner rejected claims 4-6 and 9-11 as being anticipated under 35 U.S.C. § 103(a) over Monteiro in view of Broadhurst and further in view of Srinivasan et al. (U.S. Patent Application 2001/0023436, hereafter referred to as 'Srinivasan').

#### **VII. ARGUMENT**

Monteiro when taken alone or in any combination with Broadhurst and Srinivasan neither anticipates nor makes unpatentable the present claimed invention. Thus, reversal of the Final Rejection (hereinafter termed "rejection") of claims 2-16 under 35 U.S.C. § 103(a) is respectfully requested.

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**Rejection of Claims 2, 3, 7, 8 and 12-16 as being anticipated under 35****U.S.C. § 103(a) over Monteiro in view of Broadhurst**

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed.Cir. 1988). In so doing, the Examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (CCPA 1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teaching, suggestion, or implication in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. *Uniroya, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed.Cir. 1988), *cert. denied*, 488 U.S. 825 (1988); *Ashland Oil Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 28, 293, 227 USPQ 657, 664 (Fed.Cir. 1985), *cert. denied*, 475 U.S. 1017 (1986); *ACS Hosp. Sys., Inc. v. Montefiore Hosp.*, 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed.Cir. 1984). These showings by the Examiner are an essential part of complying with the burden of presenting a *prima facie* case of obviousness. *In re Oetiker*, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed.Cir. 1992).

Reversal of the rejection of Claims 2, 3, 7, 8 and 12-16 under 35 U.S.C. §103(a) as being unpatentable over Monteiro in view of Broadhurst is respectfully requested. The rejection erroneously states that Claims 2, 3, 7, 8

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and 12-16 are unpatentable over Monteiro in view of Broadhurst for the reasons discussed herein below.

Independent Claim 13 claims "a conditional access processor operable to determine authorization of multiple content broadcast sources to concurrently provide broadcast multimedia program content to the system". This claimed feature of Claim 13 is neither disclosed nor suggested in Monteiro or Broadhurst alone or in combination.

Examiner in the Final Rejection stated that the operation of the claimed conditional access processor was not disclosed in the Monteiro reference. Examiner then wrote that, "Broadhurst teaches systems often employ some type of authorization before access is given to the associated services or resources." The Examiner concluded that it would have been obvious for one skilled in the art to modify Monteiro as indicated by Broadhurst such that, "the conditional access processor [would be] operable to determine authorization of multiple broadcast sources to concurrently provide broadcast multiple program content".

Appellants note that the Monteiro reference does in fact disclose an aspect of conditional access. This conditional access teaching however is directed towards what would be an end user, not what is a "conditional access processor operable to determine authorization of multiple broadcast sources to concurrently provide broadcast multimedia program content *to the system*" (emphasis added) as claimed in Claim 12. Specifically, Monteiro states:

"The control architecture described in this section is responsible for managing and administering the Users who are receiving the information being delivered by the distribution architecture described in the previous section. The control architecture handles new User registration, User login, the starting and stopping of audio streams and the monitoring of ongoing

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transmissions. The control architecture is scalable just as is the distribution architecture so that any number of Users can be managed," (Monteiro, col. 8, lines 28-36).

The combination of the Broadhurst with Monteiro is merely cumulative to the disclosure concerning the management of Users. The section of Broadhurst the Examiner cites as teaching the operation of the claimed conditional processor is as follows:

"When a user desires access to a new application....new applications will often have different configuration and/or manufacturer than the initial application), such as a new server has a login/authentication procedure which is independent of previous login/authentication procedures encountered by the user. To access the web pages, appropriate identification credentials must be presented to the new application. This is conventionally accomplished by requiring the user to input additional login/authentication information specific to the new application, or by hard-coding a generic login and password in the scripts used by the user's web server to access the new application," (Broadhurst, col. 1, lines 14-29).

These teachings of Broadhurst and Monteiro concern an end user, not the operation of a system itself where "a condition access processor [is] operable to determine authorization of multiple broadcast sources to concurrently provide broadcast multimedia program content to *the system*" (emphasis added). More appropriately, the claim language of Claim 12 concerns an operation affecting the head end of a system, not the end user as disclosed by the Examiner's combination of Monteiro and Broadhurst. Appellants submit that the Examiner's combination does not disclose or suggest the claimed features of Claim 13.

Additionally, if one skilled in the art were to combine Monteiro with Broadhurst, in the manner suggested by the Examiner, the resulting system would operate as to what access privileges a user has for logging in to a system (Monteiro, col. 8, lines 31-33) or what applications such a user can

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access (Broadhurst, col. 1, lines 14-22). The Examiner's resulting combination does not disclose or suggest the operation of having "a condition access processor operable to determine authorization of multiple broadcast sources to concurrently provide broadcast multimedia program content to the system" as claimed in Claim 13. The only way the claimed combination could function in the way as claimed in Claim 13 is to apply hindsight knowledge from the Appellants' invention as to modify the Examiner's combination from operating for an end user, to operating as a conditional access system at a head end where multiple resources (broadcast multimedia program content) are provided concurrently.

Appellants submit that Claim 13 is patentable for the reasons given above. In addition, Appellants submit that Claims 2, 3, 7, 8, 12, and 14-16 are patentable; as such claims depend on independent Claim 13. Therefore, it is further respectfully submitted that this rejection is overcome and should be withdrawn.

**Rejection of Claims 4-6 and 9-11 as being anticipated under 35 U.S.C. § 103(a) over Monteiro in view of Broadhurst and in further view of Srinivasan**

Reversal of the rejection of Claims 4-6 and 9-11 under 35 U.S.C. § 103(a) as being unpatentable over Monteiro in view of Broadhurst and further in view of Srinivasan is respectfully requested. The rejection erroneously states that Claims 4-6 and 9-11 are obvious in over Monteiro in view of Broadhurst and further in view of Srinivasan for the reasons discussed above for Claim 13.



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Specifically, Claims 4-6 and 9-11 depend on independent Claim 13.  
Therefore, Appellants submit that this rejection is overcome and should be withdrawn.

Respectfully submitted,  
Barry Weber et al.

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April 28, 2005

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**APPENDIX 1 - APPEALED CLAIMS**

Claim 1 (cancelled).

2. (previously presented) The system of claim 13, wherein:

said broadcast multimedia program content comprises at least one of (a) streamed audio data, (b) streamed video data, (c) voice representative data, (d) voicemail data, and (e) a radio or video broadcast.

3. (previously presented) The system of claim 13, wherein:

said scheduler receives and pre-caches advertisements from multiple sources to provide candidate advertisements for selection of said designated advertisement for insertion in said selected multimedia program content at said scheduled insertion time.

4. (previously presented) The system of claim 13, wherein:

said scheduler schedules insertion of said designated advertisement into said multimedia program content based on at least one of (a) scheduling information provided by a broadcast source of said selected broadcast multimedia program, and (b) scheduling information provided by a source of said designated advertisement.

5. (original) The system of claim 4, wherein:

said scheduling information contains advertisement scheduling information covering multiple broadcast multimedia programs.

6. (original) The system of claim 4, wherein:

said scheduling information provided by a broadcast source comprises at least one of (a) information indicating time slots available for advertisement insertion in said broadcast multimedia program, (b) markers in said selected broadcast multimedia program indicating an advertisement insertion time slot, and (c) information for identifying advertisement insertion time slots from time stamp indications.

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7. (previously presented) The system of claim 13, wherein:

said multiplexer repeats said composite program datastream by mapping stored data comprising said composite program datastream to provide multiple stored copies of said composite program datastream for coupling to multiple users to enable scaleable expansion of broadcast of said composite program datastream.

8. (previously presented) The system of claim 13, wherein:

said multiplexer tracks a user connection and maintains a database of user connection related statistics comprising at least one of (a) user favorite program sources, (b) number of advertisements broadcast, (c) number of users receiving said composite program datastream, and (d) length of user connection to a particular composite program datastream.

9. (previously presented) The system of claim 13, wherein:

said multiplexer dynamically reallocates advertisements targeted to a user during broadcast of said composite program datastream in response to a command by selecting an advertisement from a plurality of available advertisements of duration suitable for a time slot at said scheduled insertion time.

10. (original) The system of claim 9, wherein:

a locally sourced advertisement is selected for said time slot in preference to a non-locally sourced advertisement.

11. (original) The system of claim 10, further comprising:

an error processor operable to parse said composite program datastream to detect error, and including an error concealment function operable to reduce the consequences of a detected error.

12. (previously presented) The system of claim 13, further comprising:

a user profile database operable to allocate one of a plurality of available different advertisements for delivery to an individual user based on previously compiled user preference data in said user profile database; and

a data acquisition processor operable to compile user preference information used in said user profile database based on prior user program selection history.

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13. (original) A system for processing broadcast multimedia program content and advertisements to provide a composite program datastream having multimedia data content and user targeted advertisements to multiple different users, comprising:

a condition access processor operable to determine authorization of multiple broadcast sources to concurrently provide broadcast multimedia program content to the system;

a scheduler operable to schedule time of insertion of a designated advertisement into selected broadcast multimedia program content; and

a multiplexer operable to provide multiple users with individualized composite program datastreams by performing in parallel for multiple users:

insertion of a designated advertisement into a selected multimedia program content at a scheduled insertion time to form a composite program datastream; and

coupling of said composite program datastream to a corresponding user of the multiple users.

14. (original) The system of claim 13, wherein:

said conditional access processor determines authorization of a broadcast source to provide broadcast multimedia program content based on at least one of (a) a broadcaster ID, and (b) a password.

15. (original) The system of claim 13, wherein:

said conditional access processor includes a decryption function to decrypt at least one of (a) encrypted broadcast multimedia program content, and (b) an encrypted authorization code or password.

16. (original) The system of claim 13, wherein:

said multiplexer repeats said composite program datastream by mapping stored data comprising said composite program datastream to provide multiple stored copies of said composite program datastream for coupling to multiple users to enable scaleable expansion of broadcast of said composite program datastream.

Claims 17-21 (cancelled).

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**APPENDIX II - EVIDENCE**

Appellants relies on no evidence other than the arguments presented hereinabove.

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**APPENDIX III - RELATED PROCEEDINGS**

Appellants respectfully submit that there are no related proceedings in this present application.

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**APPENDIX IV - TABLE OF CASES**

1. *In re Fine*, 5 USPQ 2d 1600, (Fed Cir. 1988)
2. *ACS Hospital Systems Inc v. Montefiore Hospital*, 221 USPQ 929,933  
(Fed. Cir. 1984)
3. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467  
(CCPA 1966)
4. *Uniroyal, Inc. v. Rudkin-Wiley Corp.*, 837 F.2d 1044, 1051, 5 USPQ2d  
1434, 1438 (Fed.Cir. 1988), *cert. denied*, 488 U.S. 825 (1988)
5. *Ashland Oil Inc. v. Delta Resins & Refractories, Inc.*, 776 F.2d 28,  
293, 227 USPQ 657, 664 (Fed.Cir. 1985), *cert. denied*, 475 U.S. 1017  
(1986)

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**APPENDIX V - LIST OF REFERENCES**

| <u>U.S.Pat./App</u><br><u>No.</u> | <u>Issued Date</u> | <u>102(e) Date</u> | <u>Inventors</u>  |
|-----------------------------------|--------------------|--------------------|-------------------|
| 5,778,187                         | Jul. 7, 1998       |                    | Monteiro et al.   |
| 6,205,480                         | Mar. 20, 2001      |                    | Broadhurst et al. |
| 2001/0023436                      |                    | Jan. 22, 1999      | Srinivasan et al. |



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